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Attorneys for Defendant Rushmore Loan
Management Services, LLC and U.S. Bank National
Association, as Trustee for the REO Trust 2017-RPL1

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

WILLIAM X. NIETZCHE, solely as Trustee
for KRME International Trust; WILLIAM
KINNEY, JR.; and JULIE ANN METCALF
KINNEY,

Plaintiffs,

v.

FREEDOM HOME MORTGAGE
CORPORATION (FHMC); MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS
(MERS); BENEFICIAL OREGON INC.
(BOI); HSBC HOLDINGS PLC (HSBC);
REGIONAL TRUSTEE SERVICES
CORPORATION (RTSC); MTGLQ
INVESTORS L.P. (MTGLQ); RUSHMORE
LOAN MANAGEMENT SERVICES LLC
(RLMS); U.S. BANK NATIONAL
ASSOCIATION (USBNA); CLEAR RECON
CORPORATION (CRC); BARRISTERS
SUPPORT SERVICES (BSS); and URBAN
HOUSING DEVELOPMENT (UHD);

Defendants.

Case No. 3:18-cv-1930-SI

**DEFENDANTS RUSHMORE
LOAN MANAGEMENT
SERVICES, LLC AND U.S. BANK
NATIONAL ASSOCIATION'S
RESPONSE TO PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION
AND TO PLAINTIFFS' MOTION
TO STAY RELATED STATE
COURT PROCEEDINGS**

Defendants Rushmore Loan Management Services, LLC (“Rushmore”) and U.S. Bank National Association, as Trustee for REO Trust 2017-RPL1, (“U.S. Bank”) hereby respond to Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction and Plaintiffs’ “Motion to Stay State Court Proceedings; Motion for Sanctions for Barratry,” THE LATTER OF which this Court has elected to construe as a motion for a temporary restraining order to stay related state court proceedings. (Docket No. 23).

INTRODUCTION AND PROCEDURAL POSTURE

This case concerns real property located at 4406 N. Mississippi, Portland, Oregon 97217 (the “Subject Property”). Plaintiffs were the owners of the Subject Property, which was secured by a mortgage loan. During some of the times relevant to Plaintiff’s alleged claims, Rushmore serviced the mortgage loan and U.S. Bank, as Trustee for the REO Trust 2017-RPL1, was the loan’s beneficiary.

After Plaintiffs defaulted on their obligations under the mortgage loan, the Subject Property was foreclosed by advertisement and sale on October 23, 2018. (Complaint, ¶¶ 75, 85). At that foreclosure, the Subject Property was purchased by co-defendant Urban Housing Development, LLC (“UHD”). (Complaint, ¶ 86).

Plaintiffs filed this action on November 5, 2018 and filed a Motion for Temporary Restraining Order and Preliminary Injunction the same day. On November 19, 2018, UHD filed an FED complaint in Multnomah County Circuit Court, Case No. 18LT16339. Plaintiffs then filed a “Motion to Stay State Court Proceedings; Motion for Sanctions for Barratry” in the FED proceeding on November 28, 2018, and that same day filed a separate request for this Court to consider that motion. (Docket No. 10).

A. Response to Motion for Temporary Restraining Order and Preliminary Injunction to Enjoin Non-Judicial Foreclosure Sale.

Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction should be denied for the most fundamental of reasons: the conduct Plaintiffs seek to enjoin has already occurred.

Plaintiffs' motion requests an order from this Court "enjoining Defendants from effectuating their purported non-judicial sale of Plaintiff's real property that took place October 23, 2018..." and to "enjoin the pending foreclosure sale." (Motion, p. 2 and p. 6, respectively.) As a practical matter, this Court cannot enjoin a sale which occurred six weeks ago, almost two weeks before the motion to enjoin that sale was filed. Moreover, such requested relief is moot as a matter of law. *See e.g. Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827 (9th Cir. 2014) ("We are unable to effectively remedy a present controversy between the parties where a plaintiff seeks to enjoin an activity that has already occurred, and we cannot "undo" that action's allegedly harmful effects"); *Dean v. Baker*, 884 F.2d 1394 (9th Cir. 1989) (dismissing claim as moot because "the act [plaintiff] sought to enjoin has already occurred"). Accordingly, Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction must be denied.

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B. Motion to Stay State Court Proceedings; Motion for Sanctions for Barratry

Rushmore and U.S. Bank are not parties to the State Court FED action and, therefore, take no position on Plaintiffs' request to stay that proceeding.

DATED: December 7, 2018.

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National Bank Association, as Trustee for
the REO Trust 2017 RPL-1

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2018, I served the foregoing DEFENDANTS RUSHMORE LOAN MANAGEMENT SERVICES, LLC AND U.S. BANK NATIONAL ASSOCIATION'S RESPONSE TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION TO STAY RELATED STATE COURT PROCEEDINGS on the individuals listed below by causing a true copy thereof to be served in the manner specified below:

William X. Nietzsche Julie A. Metcalf Kinney William Kinney, Jr. c/o Julie A. Metcalf Kinney 4406 N. Mississippi Portland, OR 97217 Pro se Plaintiffs	<input type="checkbox"/> Email <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile
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David W. Venables Terrance J. Slominski Slominski and Associates 7100 SW Hampton St., Suite 101 Tigard, OR 97223 Email: venables.slominski.law@gmail.com ; tjslominski@yahoo.com Attorneys for Urban Housing Development, LLC	<input checked="" type="checkbox"/> Email by court ECF filing <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile

DATED: December 7, 2018.

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